IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO: 15872 of 2005

Between:

B.Ramachandra Reddy, S/o.B.Narayana Reddy,

Hindu, aged about 35 years, Occ: Cultivation,

R/o.D.No.3/266, TOPAVANAM, Ananthapur,

Ananthapur District.

..... PETITIONER

AND

1. B.Lalithamma, w/o.B.Siva Shanker Reddy,

   Hindu, aged about 27 years, R/o.D.No.1-270-A,

   Narayanapuram Panchayat, Ananthapur,

   Ananthapur District.

2. B.Narayana Reddy, S/o.B.Siva Shanker Reddy,

Hindu, aged 14 years, R/o.D.No.1-270-A,

Narayanapuram Panchayat, Ananthapur,

Ananthapur District.

3. B.Geetha, D/o.B.Siva Shanker Reddy,

Hindu, aged 11 years, R/o. D.No.1-270-A,

Narayanapuram Panchayat, Ananthapur,

Ananthapur District.

4. The Divisional Manager, New India Assurance Co.,

Limited, Ananthapur, Ananthapur District.

5. The Commissioner for Workmen's Compensation

-Assistant Commissioner of Labour, Ananthapur,

Ananthapur District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ or order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 5th respondent in not entertaining and returning the applications filed by the petitioner to set-aside the exparte and condone delay petition in W.C.No.6 of 2003 on the file of the 5th respondent is illegal, arbitrary, unconstitutional and without jurisdiction. Consequently, direct the 5th respondent to entertain the applications filed by the petitioner to set aside the exparte order and condone delay petition in W.C.No.6 of 2003 on the file of the 5th respondent.

Counsel for the Petitioner: MR.K.V.SUBBA REDDY

Counsel for the Respondent No.4: MR.K.SRINIVASA MURTHY SC FOR NIAC

Counsel for the Respondent No.5: G.P. FOR LABOUR

The Court at the admission stage made the following:

ORDER:

This writ petition is filed by the petitioner aggrieved by the action of the 5th respondent in not entertaining his application, which was filed seeking to set aside the award passed in W.C.No.6 of 2003, dated 31-07-2003 which according to the petitioner was only an *ex parte* award.

2. According to the petitioner, when he filed an application to set aside the *ex parte* order, the said application was rejected with an endorsement that 'the

authority has no power to review his own order and the matter is pending before the Revenue authority i.e., Mandal Revenue Officer, to recover the compensation amount as per the award and there is a delay of 580 days in filing the petition'. The grievance of the petitioner is that when an award is passed *ex parte* without even serving a notice on the petitioner, the award passed is illegal and unsustainable and is liable to set aside. Therefore, he filed an application under Order IX Rule 13 of the Code of Civil Procedure (for short 'C.P.C.') seeking to set aside the said award, which was passed without giving any notice and opportunity to the petitioner.

3. When such an application is filed, according to the learned counsel for the petitioner, the application has to be entertained and an order has to be passed on merit, but cannot be returned with certain objections saying that the review petition is not maintainable. In fact, according to the petitioner, it is not a review petition, but only a petition to set aside the award on the ground that such an award was passed without serving notice on the petitioner.

4. At the time of hearing, the learned counsel for the petitioner also relied upon a judgment of this Court in **Mohd. Moinuddin and another v . The Commissioner for Workmen's Compensation and others,** where a learned Single Judge of this Court referred to the provisions of Section 23 of the Workmen's Compensation Act, 1923, (for brevity 'the Act') and held that a petition to set aside the *ex parte* order is maintainable.

5. Heard both sides and considered the material on record.

6. The grievance of the petitioner is that his application filed under Order IX, Rule 13 C.P.C. to set aside the *ex parte* award passed by the fifth respondent was not entertained on the ground that the provisions have no application and the Commissioner under the Act has no power of review and there is a delay in filing the petition. The said objections were taken by the fifth respondent-Commissioner under the Act without passing any detailed order, assailing

which the petitioner has come up with the present writ petition.

7. Though the learned counsel relied upon the judgment of a learned single Judge of this Court in the case of **Mohd.Moinuddin** (1 supra), the said judgment refers to Section 23 of the Act. A perusal of the said Section, makes it clear that there is no clear reference as to the applicability of Order IX, Rule 13 C.P.C. to the proceedings before the Commissioner under the Act, except referring that the Commissioner under the Act is a Civil Court for the purpose of summoning the witness as well as for recording their evidence. But, however, at the time of hearing, a reference was made to Rule 41 of the Workmen's Compensation Rules, where there is an elaborate reference of various provisions of C.P.C. that are applicable to the provisions under the Act. For convenience the said Rule is extracted as under:

> " **41. Certain provisions of Code of Civil Procedure, 1908, to apply:--**
>
> Save as otherwise expressly provided in the Act or these Rules the following provisions of the First Schedule to the Code of Civil Procedure, 1908, namely, those contained in Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 3 to 10; Order XVI, Rules 2 to 21; Order XVII; and Order XXIII, Rules 1 and 2, shall apply to proceeding before Commissioners, in so far as they may be applicable thereto:"

From the above, it is clear that Order IX, Rule 13 C.P.C. is applicable to the proceedings under the Workmen's Compensation Act, therefore, there is no justification for the fifth respondent in not entertaining the application filed by the petitioner seeking to set aside the award. The claim of the petitioner is that no notice was served on him before passing the award by the fifth respondent, therefore, the award is liable to be set aside.

8. Since the rejection of the application is only by way of objections raised and no order was passed on merits in the application by the 5th respondent, the impugned objections raised by the 5th respondent are not sustainable and therefore, it is appropriate to entertain the application after issuing notice to the

respondents, and pass appropriate orders after hearing both sides.

9. The writ petition is disposed of at the admission stage, as the writ petition is directed against the objections raised by the 5th respondent as to the maintainability of the petition filed under Order IX Rule 13 CPC seeking to set aside the *ex parte* award passed by the 5th respondent. Accordingly, the 5th respondent is directed to dispose of the application of the petitioner, seeking to set aside the *ex parte* order, expeditiously.

10. Accordingly, the writ petition is disposed of. No order as to costs.

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S.ANANDA REDDY, J

21st July, 2005

SKM

Copy to:

1. The Divisional Manager, New India Assurance Co.,
Limited, Ananthapur, Ananthapur District.

2. The Commissioner for Workmen's Compensation
-Assistant Commissioner of Labour, Ananthapur,
Ananthapur District.

3. Two C.Cs. to G.P. for Labour, High Court Buildings,
High Court of A.P., Hyderabad (OUT)

4. Two C.D. Copies.